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January 3, 2001

Mr. Jeff S. Jordan  
Supervisory Attorney  
Central Enforcement Docket  
Federal Election Commission  
999 E. Street, N.W.  
Washington, D.C. 20463

Re: MUR 5127

Dear Mr. Jordan:

On behalf of myself, and my clients, the Democratic Party of Illinois ("DPI"), Michael J. Madigan, as its Chairman, and Timothy Mapes, I am writing in response to your correspondence of November 1, 2000 regarding the Complaint in the above referenced matter. For the reasons set forth in greater detail below, the Commission should decline to take any further action regarding this Complaint because it is completely without any legal or factual justification.

1. The Complaint Should be Dismissed Because It Does Not Sufficiently Allege, and Offers No Proof of, Any Violation.

The Complaint's allegations can essentially be summarized as: (a) Timothy Mapes is unpaid as DPI's Executive Director; (b) Timothy Mapes is paid by the State of Illinois as the Chief of Staff for the Speaker of the Illinois House of Representatives; (c) Therefore, Timothy Mapes must be paid by the State of Illinois to be DPI's Executive Director. The complete deficiency in this logic is readily apparent.

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The Complaint, incorrectly and without any support whatsoever, alleges that "the State of Illinois is paying for Mr. Mapes to be the Democratic Party of Illinois Executive Director." Complaint p. 1. As a result, the Complaint goes on, DPI has accepted an excessive contribution from the State of Illinois. Complaint p. 2. The Complaint fails to allege, much less offer any support, that Mr. Mapes does not, in fact, work as Chief of Staff for the Speaker of the Illinois House of Representatives. Moreover, the Complaint does not allege that Mr. Mapes' compensation from the State of Illinois is not commensurate with the service he provides in that capacity.

The Complaint's inflammatory accusations offer no support whatsoever for its remarkable allegations. The only purported support is that DPI raised approximately \$2 million in Federal funds and approximately \$2.7 million in Nonfederal funds between January 1998 and September, 2000, and that as a result "the Democratic Party cannot credible (sic) argue that it has done this without a full time Executive Director." Complaint fn. 1. Of course, the Complaint fails to explain why a full time Executive Director is necessary to raise funds, or that Mr. Mapes was in any way involved in DPI's fundraising activity.

Mr. Mapes is, in fact, employed and paid by the State of Illinois "to be" the Chief of Staff for the Speaker of the Illinois House of Representatives. He is not employed and paid by the State of Illinois "to be" DPI's Executive Director. There are at least two separate ways that Mr. Mapes can act as DPI's Executive Director without compensation from DPI. First, Mr. Mapes could volunteer

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his services during non-employment time. Second, Mr. Mapes could, even during employment time, use bona fide vacation or other earned leave time.

Federal law recognizes, and indeed encourages, that individuals will volunteer their time and energy to political campaigns and committees. In fact, the Code of Federal Regulations specifically provides that "[t]he value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee is not a contribution." 11 CFR 100.7(b)(3); see also Advisory Opinion 1984-43; Advisory Opinion 1978-77. Here, the Complaint does not allege, much less prove, that Mr. Mapes does not volunteer his time to DPI. In the absence of such allegation and proof, the Complaint cannot sustain the alleged excessive contribution from Mr. Mapes employer, the State of Illinois.

Not only does federal law recognize that individuals will volunteer for political committees, the law also recognizes that they will do so using their vacation and other accrued leave time. Specifically, the law provides that "[n]o contribution results where the time used by the employee to engage in political activity is bona fide, although compensable, vacation time or other earned leave time." 11 CFR 100.7(a)(3)(iii); see also Advisory Opinion 1992-3; Advisory Opinion 1984-43. Once again, the Complaint does not allege that Mr. Mapes is not using bona fide vacation or other leave time while acting as DPI's Executive Director.

The Complaint in this matter is completely without merit. The sole basis of this Complaint appears to be that Mr. Mapes has a job besides being DPI Executive Director. The Complaint

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does not assert that Mr. Mapes does not perform that job, that he is overly compensated for that job, or that he is in any way deficient in that job. The Complaint does not claim that Mr. Mapes is not a volunteer for DPI, as provided by federal law. The Complaint does not allege that Mr. Mapes is not using bona fide vacation or other leave time, also as provided by federal law. Instead, the Complaint simply asserts, without any support, that because he has a job, his employer *must* be paying him for his political activity.

Nothing in this Complaint distinguishes Mr. Mapes from the tens of thousands, if not millions, of Americans who volunteer their time and energy for political candidates and parties each year. If a Complaint as deficient as this is permitted to stand, then every employed person who volunteers on behalf of a political candidate risks being called to defend themselves from frivolous, unsubstantiated claims like this one. It is difficult to imagine a scenario that would deter political volunteerism more.

2. The State of Illinois Cannot Make an Excessive Contribution.

The Complaint incorrectly alleges that the State of Illinois has made an excessive contribution. The Federal Election Campaign Act defines "contribution" as "any gift, subscription, loan, advance, or deposit of money or anything of value made by *any person* for the purpose of influencing any election for any federal office..." 2 USC 431(8)(A)(i). Any "person" may contribute up to \$5000 to DPI each calendar year. 2 USC 441a(a)(1)(c). The term "person" is defined as an "individual, partnership, committee, association, corporation, labor organization, or any other

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organization or group of persons but does not include the Federal Government or any authority of the Federal Government." 2 USC 431(11). Interestingly, the term "State" is separately defined "a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory of possession of the United States." 2 USC 431(12).

The Section imposing limits on contributions, Section 441a, specifically references limits contributions made by a "person." Section 441a makes no reference to "States" as that term is defined in Section 431. Accordingly, the only possible conclusion is that the limitations applicable to "persons" are not applicable to "States."

3. The Commission Should Decline to Take Any Further Action  
On this Complaint on the Basis of Fairness and Laches.

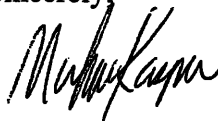
This Complaint is obviously politically motivated. The Commission received this Complaint on October 25, 2000. The Complaint came less than two weeks prior to the 2000 General Election, despite the fact that some of the allegations contained therein are over two years old. The timing of this Complaint clearly demonstrates that this is merely a case of on political party trying to gain an advantage in an upcoming election by sullyng the names and reputations of individuals affiliated with an opposing party. The Commission should decline to allow its enforcement procedures to be used in such politically motivated way

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4. Conclusion.

For the reasons enumerated above, DPI respectfully requests that the Commission take no further action on this Complaint.

Sincerely,



Michael J. Kasper